

C O U N C I L C O M M U N I C A T I O N

TO: THE CITY COUNCIL
FROM: THE CITY MANAGER'S OFFICE

COUNCIL MEETING DATE
JANUARY 3, 1990

SUBJECT: CONTRACT AWARD FOR WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
 EXPANSION PROJECT, 12751 NORTH THORNTON ROAD

PREPARED BY: City Attorney Bob McNatt
 Public Works Director Jack Ronsko

RECOMMENDED ACTION: That the Council consider declaring the bid of Alder Construction Company nonresponsive, and awarding the bid for the sewer plant expansion to F&H Construction Company as second low bidder in the amount of \$10,171,000.

BACKGROUND INFORMATION: Bids on this project were previously opened on November 1, 1989. At that time, the City received six bids ranging from approximately \$12M to \$16M. The engineers' estimate was \$8.8M and since the City did not have sufficient funds to award the project as bid, the City Council rejected all bids on November 21, 1989. The Council also approved a revised set of plans and specifications which removed certain items from the bid document. The new bid document also provided for deductive alternate bids on certain items.

On December 15, 1989 the City received the six bids shown on the attached sheet (Exhibit A). These bids include a base bid plus the following six deductive alternates:

- A. Existing digester cover replacement
- B. Storage pond improvements
- C. Irrigation system improvements
- D. Irrigation pump adjustable frequency controllers
- E. Painting existing piping and equipment
- F. Adding 60 days to the contract

Contract Award For White Slough Water Pollution Control Facility
Expansion Project, 12751 North Thornton Road
January 3, 1990
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It was the original intent of staff to recommend that Alder Engineering be awarded the bid and that the amount of the award be the base bid minus Deductive Alternate A, existing digester cover replacement, and Deductive Alternate D, irrigation pump adjustable frequency controllers.

At the Council meeting of December 20, 1989, the award of the contract was on the agenda. However, on the same day, at approximately 4:00 p.m. a protest was received from F&H Construction Company (the second low bidder) alleging that Alder's bid was irregular. The matter was continued to January 3, 1990 so staff could look further into the matter of the protest. Letters from both Alder and F&H have been received (Exhibits D and E) as well as F&H's attorney (Exhibit F). After extensive research, it is now evident that the protest by F&H Construction raises valid concerns.

BID REQUIREMENTS

The Instructions To Bidders which all bidders received contain several portions which refer to the regularity and acceptability of bids, such as:

- The owner reserves the right to award the contract by phases, to reject all bids, to waive informalities, and to reject nonconforming, nonresponsive or conditional bids. (pp. 1-2)
- On page B-3, it states that "All blank spaces in the bid form shall be filled. Bids received without all such items completed will be considered nonresponsive."
- At paragraph 10 on page B-4, it is stated that "Owner reserves the right to reject all bids, to award the contract by sections, to waive informalities, and to reject nonconforming, nonresponsive, or conditional bids."
- In the Questionnaire portion of the bid packet, page Q-1, it states "Failure to furnish all information requested in the questionnaire may be a cause for rejection of the bid."

ALDER ENGINEERING'S BID

On page BF-3 of its bid (Exhibit B), Alder failed to identify separately the amounts included in its base bid for the lagoon dredge, industrial pump controls and membrane diffused aeration equipment, leaving these lines blank, in apparent contradiction to bidding instructions which state that all lines left blank will result in the bid being deemed nonresponsive.

On page LS-2 of the list of subcontractors, Alder identifies a subcontractor only as "Environmental" which has been challenged by F&H Construction as inadequately identifying a subcontractor. Additionally, no addresses for subcontractors were furnished.

The Questionnaire (pages Q-1 and 2) requires the name of manufacturers of mechanical equipment in 26 categories. Alder originally identified only four of the 26 suppliers, delivering the balance of the names three days after bids were opened. F&H Construction feels this is an irregularity requiring that Alder's bid be rejected.

ANALYSIS

Public Contracts Code Sections 20161(c) and 20162 require competitive bids on public projects such as the White Slough expansion. This same chapter provides other procedural guidelines for bids on similar projects. To facilitate these requirements, bid instructions discussed above were drafted by the City and its consultant Black and Veatch, and were included in the bid information packet. These constitute the rules under which the bids were to be received and the contract awarded. The language of these instructions, cited above, states that where information which bidders "shall" furnish is omitted from the bid forms, the bid "will" be deemed nonresponsive. On the other hand, the Questionnaire states that if all information requested on the Questionnaire is not provided, the bid "may" be rejected. The words "will" or "shall" are generally mandatory, while "may" implies discretion (58 Cal.Jur. 3d, §147).

A contract made in violation of statutes on competitive bidding is illegal and void (Reams vs Cooley, 171 C. 150; 53 Cal.Jur. 3d, Public Works and Contracts, §27). The question here is one of interpretation, i.e., whether Alder's omission in its bid amounted to a simple "informality" (which the Council can waive under the bid instructions) or was an "irregularity", requiring rejection of the bid as unresponsive.

The California Attorney General has previously said that if an error or omission in a bid is "inconsequential" a bid award is proper, but if it is a "substantial deviation" the bid is invalid (47 Ops.A.G. 129). One of the basis for the determination is whether the deviation "...gives a bidder an advantage or benefit not allowed other bidders...." (Id, at 131). As stated in the letter from F&H's attorney, they feel it did allow Alder an advantage.

Helping further define these terms is the case of Konica Business Machines vs Regents of the University of California (1988) 253 C.R. 591, which says a deviation is "substantial" unless it is so inconsequential that it could not affect the bid amount (Konica, Supra, at 594). For example, failure to sign a bid in one place was deemed a minor defect (or "informality") not so great as to invalidate a bid (Menefee vs County of Fresno (1985) 210 C.R. 99).

F&H Construction says that by not including a list of suppliers of mechanical equipment until after Alder was deemed the low bidder, gave Alder the opportunity to "bid shop" its suppliers. "Bid shopping" has been defined by California courts as "the use of a low bid already received by the general contractor to pressure other subcontractors (or suppliers) into submitting even lower bids (Sherman Company vs Thomason, Inc. (1987) 236 C.R. 577, at 582). This practice is disfavored in California (Pub. Contracts Code, §4101).

While there is no basis to believe Alder has engaged in bid shopping, F&H points out that Alder's failure to include the names of mechanical suppliers in its bid could present an opportunity to do so. "Because of potential for abuse arising from deviation from strict adherence to the standards which promote public benefit, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without compliance with bidding requirements will be set aside. This preventive approach is applied even where it is certain there was in fact no corruption...and the deviations would save the entity money (emphasis added)..." (Konica, Supra at 595).

SUMMARY

This situation admittedly presents a close call, and my opinion is a conservative one which I feel best protects the City. Credible arguments have been made by both bidders, but no matter which course of action the Council may choose, it is possible the matter may be decided in court. There are numerous cases in which unsuccessful bidders have sought to recover costs of preparing the bids, and in some cases also asked for lost profits. The more legally defensible position at this point appears to me to be for the Council to find the omissions in Alder's bid to be substantial, making the bid irregular, nonresponsive and thus unacceptable. While we would obviously prefer to accept the low bid, I believe that action might be challenged successfully. I will be in contact with the legal department of Black & Veatch, the City's consultants, and will keep the Council advised of their recommendations.

If the Council accepts F&H's bid, (Exhibit C) the total bid award would be:


Base Bid	\$10,397,000
Deductive Alternate A	[181,000]
Deductive Alternate D	[45,000]
Bid Award Amount	<u>\$10,171,000</u>

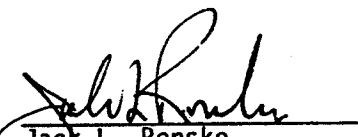
Contract Award For White Slough Water Pollution Control Facility
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The Finance Department has determined that over the life of the construction project (19 months) we will have approximately \$11,250,000 available. The expenditures to complete the project are estimated as follows:

Construction contract	\$10,171,000
Contract administration, inspection and O&M Manual	581,000
Discharge permit and dilution study	23,000
Contingencies	300,000
Estimated Cost Total	<u>\$11,075,000</u>
Estimated Funds Available	\$11,250,000

Respectfully submitted,


Bob McNatt
City Attorney


Jack L. Ronsko
Public Works Director

BMN:br

Attachments

COUNC722

RESOLUTION NO. 90-01

=====

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING THE CONTRACT FOR WHITE SLOUGH WATER POLLUTION CONTROL FACILITY
EXPANSION PROJECT, 12751 NORTH THORNTON ROAD

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on November 1, 1989 at 11:00 a.m. for the contract for White Slough Water Pollution Control Facility Expansion Project, 12751 North Thornton Road, described in the specifications therefor approved by the City Council on July 19, 1989; and

WHEREAS, at a noticed special meeting of the City Council held November 21, 1989, the City Council:

- 1) rejected all bids received on November 1, 1989, since the City had insufficient funds to award the project;
- 2) approved a revised set of plans and specifications removing certain items from the bid document; and
- 3) authorized readvertising of bids for the project; and

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on December 15, 1989 at 11:00 a.m. for the above described project; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as shown on Exhibit A attached hereto; and

WHEREAS, the City Council finds that the bid of Alder Engineering and Construction, Salt Lake City Utah, is irregular and thus nonresponsive, and is rejected; and

WHEREAS, the City Manager recommends that award of the contract for White Slough Water Pollution Control Facility Expansion Project, 12751 North Thornton Road, be made to F&H Construction Company, Stockton, California and that the amount of the award be in the base bid minus Deductive Alternate A, Existing Digester Cover Replacement, and Deductive Alternate D, Irrigation Pump Adjustable Frequency Controllers;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi that award of the contract for White Slough Water Pollution Control Facility Expansion Project, 12751 North Thornton Road, be and the same is hereby awarded to F&H Construction Company in the amount of \$10,171,000.

Dated: January 3, 1990

Resolution 90-01
January 3, 1990
Page Two

I hereby certify that Resolution No. 90-01 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 3, 1990 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Alice M. Reimche
City Clerk

90-01

COUNC722/TXTA.07A

Exhibit A

City of Lodi							
White Slough Water Pollution Control Facility Expansion							
Bid Tabulation							
Bid Opening: 11:00 am, Dec. 15, 1989 Carnegie Forum, Lodi CA							
		Deductive Alternates					
Bidder	Base Bid \$	A. Digester Cover	B. Storage Pond	C. Irrigation Sys.	D. Freq. Control	E. Paint Ex. Equip.	F. Add 60 days
Alder Engineering & Const.	\$ 9,933,405.	227,294.	326,671.	152,108.	92,468.	5,000.	0.
Salt Lake City, UT							
F&H Construction	\$ 10,397,000.	181,000.	212,370.	247,600.	45,000.	4,494.	0.
Stockton, CA							
Kaweah Construction	\$ 10,650,000.	200,000.	320,000.	210,000.	40,000.	3,000.	0.
Fresno, CA							
Dan Caputo Co.	\$ 10,667,000.	296,000.	98,500.	186,000.	44,000.	30,000.	30,000.
San Jose, CA							
Gateway/Mark	\$ 10,796,500.	240,417.	222,969.	136,461.	53,052.	3,559.	30,000.
Sacramento, CA							
C.W. Roen Construction	\$ 10,977,400.	257,000.	215,000.	285,000.	43,000.	25,000.	1,000.
Darville, CA							
Engineer's Estimate	\$ 10,700,000.						

ALDER CONSTRUCTION COMP
3939 South 500 West Suite #.
Salt Lake City, Utah 84123

Exhibit B

B I D F O R M BY ALDER

CITY OF LODI, CALIFORNIA
WHITE SLOUGH WATER POLLUTION CONTROL FACILITIES
CAPACITY EXPANSION IMPROVEMENTS

To: City of Lodi, California

THE UNDERSIGNED BIDDER, having familiarized himself with the Work required by the Contract Documents, the site where the Work is to be performed, local labor conditions and all laws, regulations, and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into Agreement in the form attached to perform all Work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the Work; and Bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the lump sums:

BASE BID. All work complete as specified for the lump sum of:

nine million nine hundred thirty three thousand
(words)

four hundred five

Dollars (\$ 9,933,405)

Deductive Alternative A. The following deductive price is to be used in reducing the base bid amount if this alternative is selected by the Owner. For deleting existing digester cover replacement, deduct from the Base Bid the lump sum price of: two hundred twenty seven thousand

two hundred thirty four
(words)

Dollars (\$ 227,294)

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-1
(AD4-16)

Deductive Alternative B. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the storage pond improvements, deduct from the Base Bid the lump sum price of: three hundred twenty six 326

(words)

hundred

Dollars (\$ 326,671)

Deductive Alternative C. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the irrigation system improvements, deduct from the Base Bid the lump sum price of: _____

(words)

one hundred fifty two thousand one hundred eight

Dollars (\$ 152,108)

Deductive Alternative D. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the irrigation pumps adjustable frequency controllers, deduct from the Base Bid the lump sum price of: _____

(words)

ninety two thousand four hundred sixty eight

Dollars (\$ 92,468)

Deductive Alternative E. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the painting of existing piping and equipment, deduct from the Base Bid the lump sum price of: _____

five thousand

(words)

Dollars (\$ 5,000)

Deductive Alternative F. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For adding sixty (60) calendar days to the contract time, deduct from the Base Bid the lump sum price of: _____

(words)

Dollars (\$ 0)

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-2
(AD4-17)

For purposes of project administration, the following amounts which are included in the above Base Bid total apply to the items listed below:

Lagoon dredge	\$ _____
Industrial pumps controls	\$ _____
Membrane diffused aeration equipment	\$ _____
Adequate sheeting, shoring, and bracing for the protection of life or limb conforming to all applicable governmental safety orders	\$ <u>52,000.-</u>

The undersigned Bidder agrees to furnish the required Bonds and to enter into a contract within ten days after Owner's acceptance of this Bid, and further agrees to substantially complete the Work within 510 days, and to complete all Work within 570 days, after the commencement of Contract Time as defined in the General Conditions.

The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

The undersigned Bidder acknowledges receipt of the following Addenda, which have been considered in preparation of this Bid:

No. <u>1</u>	Dated <u>10-9-89</u>
No. <u>2</u>	Dated <u>10-13-89</u>
No. <u>3</u>	Dated <u>10-20-89</u>
No. <u>4</u>	Dated <u>11-30-89</u>
No. _____	Dated _____
No. _____	Dated _____

Dated in Lodi CA, this 15th day of December, 19 89

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-3
(AD4-18)

SIGNATURE OF BIDDER:

California Contractor's License Number 574661

Class A

If an Individual: _____, doing business
as _____

If a California General Partnership: _____

by _____, general partner

If a Corporation: ALDER Engineering & Construction Co

(a Utah Corporation)

by William R. Burton

Title Vice President (SEAL &)
(ATTEST)

Business Address of Bidder 3939 So 500 West

Salt Lake City, Utah 84123

If Bidder is a joint venture, other party must sign below. 801-266-8856

California Contractor's License Number _____

If an Individual: _____

doing business as _____

If a California General Partnership: _____

by _____

_____, general partner

Title _____

If a Corporation: _____

(a _____ Corporation)

by _____

(SEAL &)
(ATTEST)

Title _____

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-4
(AD4-19)

LIST OF SUBCONTRACTORS

The name and location of place of business of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvements in an amount in excess of one-half of one percent (0.5%) of the general contractor's total base bid, and the portion of work which will be done by each subcontractor is set forth as follows:

NAME OF SUBCONTRACTOR: BEARD Electrical

PORTION & TYPE OF WORK: Electrical

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: BEARD Electrical

PORTION & TYPE OF WORK: Instrumentation

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: Gibbs

PORTION & TYPE OF WORK: PAINTING

ADDRESS: _____

PHONE: ()

LIST OF SUBCONTRACTORS (Continued)

NAME OF SUBCONTRACTOR: CAMBLIN Steel Service

PORTION & TYPE OF WORK: Retaining

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: BS Smith

PORTION & TYPE OF WORK: Masonry

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: Quicks

PORTION & TYPE OF WORK: Aluminum Windows

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: Environmental

PORTION & TYPE OF WORK: HVAC

ADDRESS: _____

PHONE: ()

QUESTIONNAIRE

Each Bidder shall enter in the spaces provided the names of the manufacturers of equipment which he proposes to furnish. Upon award of a contract, the named equipment shall be furnished. Substitutions will be permitted only if named equipment does not meet the requirements of the Contract Documents, the manufacturer is unable to meet the delivery requirements of the construction schedule, or the manufacturer is dilatory in complying with the requirements of the Contract Documents. Substitutions shall be subject to concurrence of the Owner and shall be confirmed by Change Order.

Preliminary acceptance of equipment listed by manufacturer's name shall not in any way constitute a waiver of the specifications covering such equipment; final acceptance will be based on full conformity with the Contract Documents.

Failure to furnish all information requested in the Questionnaire may be cause for rejection of the Bid.

Specifi-
cation

<u>Section</u>	<u>Equipment</u>	<u>Manufacturer</u>
11115	Horizontal Nonclog End Suction Centrifugal Pumps	_____
11117	Vortex Type Horizontal End Suction Centrifugal Pumps	_____
11119	Horizontal End Suction Centrifugal Pumps	_____
11160	Progressing Cavity Pumps	_____
11170	Sludge Macerator	_____
11320	Grit Removal Equipment - Cyclone Separator with Classifier	_____
11332	Digester Gas Mixing Equipment	_____
11334	Sludge Heat Exchangers	_____
11336	Digester Gas Control Equipment	_____
11338	Digester Gas Compressors	_____
11410	Circular Sludge Collecting Equipment	_____
11440	Sludge Flotation Thickener Equipment	_____

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)

Q-1
(AD4-23)

11450	Straight Line Sludge Collecting Equipment	_____
11510	Rapid Mix Equipment	_____
11570	Membrane Diffused Aeration Equipment	_____
11620	Centrifugal Aeration Compressors	_____
11720	Chemical Feed Systems	_____
13232	Fixed Digester Covers	_____
13234	Floating Gasholder Digester Covers	_____
13400	Instrumentation	<u>KARIS Engineering</u>
13410	Programmable Logic Controller	<u>MODCON-984-680</u>
14950	Lagoon Pumping System	_____
15102	Eccentric Plug Valves	_____
15120	Hydraulic Power System	_____
16100	Major Electrical Equipment	<u>GE</u> <u>Westinghouse</u>
16150	Adjustable Frequency Controllers	<u>GE</u> <u>Westinghouse</u>

B I D F O R M BY F & HCITY OF LODI, CALIFORNIA
WHITE SLOUGH WATER POLLUTION CONTROL FACILITIES
CAPACITY EXPANSION IMPROVEMENTS

To: City of Lodi, California

THE UNDERSIGNED BIDDER, having familiarized himself with the Work required by the Contract Documents, the site where the Work is to be performed, local labor conditions and all laws, regulations, and other factors affecting performance of the Work, and having satisfied himself of the expense and difficulties attending performance of the Work,

HEREBY PROPOSES and agrees, if this Bid is accepted, to enter into Agreement in the form attached to perform all Work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the Work; and Bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the lump sums:

BASE BID. All work complete as specified for the lump sum of:

(words)
Ten Million Three Hundred Ninety Seven Thousand
Dollars (\$ 10,397,000.00)

Deductive Alternative A. The following deductive price is to be used in reducing the base bid amount if this alternative is selected by the Owner. For deleting existing digester cover replacement, deduct from the Base Bid the lump sum price of:

(words)
One Hundred Eighty One Thousand
Dollars (\$ 181,000.00)

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-1
(AD4-16)

Deductive Alternative B. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the storage pond improvements, deduct from the Base Bid the lump sum price of: _____

_____ (words)
Two Hundred Twelve Thousand Three Hundred Seventy
_____ Dollars (\$ 212,370.⁰⁰)

Deductive Alternative C. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the irrigation system improvements, deduct from the Base Bid the lump sum price of: _____

_____ (words)
Two Hundred Forty Seven Thousand Six Hundred
_____ Dollars (\$ 247,600.⁰⁰)

Deductive Alternative D. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the irrigation pumps adjustable frequency controllers, deduct from the Base Bid the lump sum price of: _____

_____ (words)
~~Eighty Three Thousand Five Hundred~~ Fifty Five Thousand
_____ Dollars (\$ ~~83,500.⁰⁰~~ 45,000 ⁰⁰)

Deductive Alternative E. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For deleting the painting of existing piping and equipment, deduct from the Base Bid the lump sum price of: _____

_____ (words)
Four Thousand Four Hundred Ninety Four
_____ Dollars (\$ 4,494.⁰⁰)

Deductive Alternative F. The following deductive price is to be used in reducing the Base Bid amount if this alternative is selected by the Owner. For adding sixty (60) calendar days to the contract time, deduct from the Base Bid the lump sum price of: _____

_____ (words)
No Change
_____ Dollars (\$ No Change)

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-2
(AD4-17)

For purposes of project administration, the following amounts which are included in the above Base Bid total apply to the items listed below:

Lagoon dredge	\$ <u>50,000.00</u>
Industrial pumps controls	\$ <u>41,000.00</u>
Membrane diffused aeration equipment	\$ <u>37,500.00</u>
Adequate sheeting, shoring, and bracing for the protection of life or limb conforming to all applicable governmental safety orders	\$ <u>25,000.00</u>

The undersigned Bidder agrees to furnish the required Bonds and to enter into a contract within ten days after Owner's acceptance of this Bid, and further agrees to substantially complete the Work within 510 days, and to complete all Work within 570 days, after the commencement of Contract Time as defined in the General Conditions.

The undersigned Bidder hereby certifies (a) that this Bid is genuine and is not made in the interest of, or in the behalf of, any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other Bidder or over the Owner.

The undersigned Bidder acknowledges receipt of the following Addenda, which have been considered in preparation of this Bid:

No. <u>ONE</u>	Dated <u>OCTOBER 16, 1989</u>
No. <u>TWO</u>	Dated <u>OCTOBER 17, 1989</u>
No. <u>THREE</u>	Dated <u>OCTOBER 25, 1989</u>
No. <u>FOUR</u>	Dated <u>DECEMBER 4, 1989</u>
No. _____	Dated _____
No. _____	Dated _____

Dated in STOCKTON this 15TH day of DECEMBER, 1989.

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-3
(AD4-18)

SIGNATURE OF BIDDER:

California Contractor's License Number 293306

Class B - SUB A

If an Individual: _____, doing business

as _____

If a California General Partnership: _____

by _____, general partner

If a Corporation: F & H CONSTRUCTION

(a CALIFORNIA Corporation)

by Jerry Harr PRESIDENT

Title Clark Fregien (SEAL &)

(CLARK FREGIEN) SEC.-TREAS(ATTEST)

Business Address of Bidder 4945 WATERLOO ROAD

STOCKTON, CA. 95205

If Bidder is a joint venture, other party must sign below. ,

California Contractor's License Number _____

If an Individual: _____

doing business as _____

If a California General Partnership: _____

by _____

_____, general partner

Title _____

If a Corporation: _____

(a _____ Corporation)

by _____ (SEAL &)

_____ (ATTEST)

Title _____

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)
(11/28/89)

BF-4
(AD4-19)

LIST OF SUBCONTRACTORS

The name and location of place of business of each subcontractor who will perform work or labor or render service to the general contractor in or about the construction of the work or improvements in an amount in excess of one-half of one percent (0.5%) of the general contractor's total base bid, and the portion of work which will be done by each subcontractor is set forth as follows:

NAME OF SUBCONTRACTOR: SORDRAGER

PORTION & TYPE OF WORK: EXCAVATE & A. C. PAVE

ADDRESS: Lincoln Ave

PHONE: (415) 373-6131

NAME OF SUBCONTRACTOR: Wayne Frazier

PORTION & TYPE OF WORK: YARD PIPING

ADDRESS: Stockton

PHONE: (209) 931-2154

NAME OF SUBCONTRACTOR: Camblin Steel

PORTION & TYPE OF WORK: CONCRETE REINFORCING

ADDRESS: So. Ta.

PHONE: (415) 922-6561

LIST OF SUBCONTRACTORS (Continued)

NAME OF SUBCONTRACTOR: Pengilly

PORTION & TYPE OF WORK: MASONRY

ADDRESS: Stackhouse

PHONE: (809) 476-0217

NAME OF SUBCONTRACTOR: Hansen

PORTION & TYPE OF WORK: PAINTING

ADDRESS: Sacramento

PHONE: (916) 797-3918

NAME OF SUBCONTRACTOR: Central Sierra Elect

PORTION & TYPE OF WORK: INSTRUMENTATION & CONTROLS

ADDRESS: Tacoma

PHONE: (209) 223-3363

NAME OF SUBCONTRACTOR: _____

PORTION & TYPE OF WORK: PROCESS PLUMBING

ADDRESS: _____

PHONE: ()

LIST OF SUBCONTRACTORS (Continued)

NAME OF SUBCONTRACTOR: Environmental

PORTION & TYPE OF WORK: VENTILATION

ADDRESS: Sacto

PHONE: (916) 381-0444

NAME OF SUBCONTRACTOR: Central Sierra Electric

PORTION & TYPE OF WORK: ELECTRICAL

ADDRESS: 5 Jackson Cal.

PHONE: (907) 223-2263

NAME OF SUBCONTRACTOR: _____

PORTION & TYPE OF WORK: _____

ADDRESS: _____

PHONE: ()

NAME OF SUBCONTRACTOR: _____

PORTION & TYPE OF WORK: _____

ADDRESS: _____

PHONE: ()

QUESTIONNAIRE

Each Bidder shall enter in the spaces provided the names of the manufacturers of equipment which he proposes to furnish. Upon award of a contract, the named equipment shall be furnished. Substitutions will be permitted only if named equipment does not meet the requirements of the Contract Documents, the manufacturer is unable to meet the delivery requirements of the construction schedule, or the manufacturer is dilatory in complying with the requirements of the Contract Documents. Substitutions shall be subject to concurrence of the Owner and shall be confirmed by Change Order.

Preliminary acceptance of equipment listed by manufacturer's name shall not in any way constitute a waiver of the specifications covering such equipment; final acceptance will be based on full conformity with the Contract Documents.

Failure to furnish all information requested in the Questionnaire may be cause for rejection of the Bid.

Specifi-
cation
Section

Equipment

Manufacturer

11115	Horizontal Nonclog End Suction Centrifugal Pumps	<u>Emurtoo</u>
11117	Vortex Type Horizontal End Suction Centrifugal Pumps	<u>Chicago</u>
11119	Horizontal End Suction Centrifugal Pumps	<u>Gould</u>
11160	Progressing Cavity Pumps	<u>Fisher</u>
11170	Sludge Macerator	<u>D.W.</u>
11320	Grit Removal Equipment - Cyclone Separator with Classifier	<u>Schlusser</u>
11332	Digester Gas Mixing Equipment	<u>Carter</u>
11334	Sludge Heat Exchangers	<u>11</u>
11336	Digester Gas Control Equipment	<u>West Tech.</u>
11338	Digester Gas Compressors	<u>M.D.</u>
11410	Circular Sludge Collecting Equipment	<u>H. Tori</u>
11440	Sludge Flotation Thickener Equipment	<u>Tenco</u>

(Lodi, CA WSWPCF)
(Capacity Expansion)
(14915)

Q-1
(AD4-23)

11450	Straight Line Sludge Collecting Equipment	<u>FMC</u>
11510	Rapid Mix Equipment	<u>Phil</u>
11570	Membrane Diffused Aeration Equipment	<u>Parkson</u>
11620	Centrifugal Aeration Compressors	<u>Lemco</u>
11720	Chemical Feed Systems	<u>Wallace</u>
13232	Fixed Digester Covers	<u>Cantor</u>
13234	Floating Gasholder Digester Covers	<u>Westch</u>
13400	Instrumentation	<u>Karris</u>
13410	Programmable Logic Controller	<u>Woodicon</u>
14950	Lagoon Pumping System	<u>Lut</u>
15102	Eccentric Plug Valves	<u>Milliken</u>
15120	Hydraulic Power System	<u>Waterman</u>
16100	Major Electrical Equipment	<u>Westinghouse</u>
16150	Adjustable Frequency Controllers	<u>11</u>

F&H
CONSTRUCTION

DEC 20 '89

City Attorney's Office

December 20, 1989

City of Lodi
221 W. Pine
Lodi, Ca. 95241

Re: Bid Proposal for: White Slough Water Pollution
Control Facilities - 12-15-89

Attn: Bob McNatt - City Attorney
221 W. Pine
Lodi, California 95241

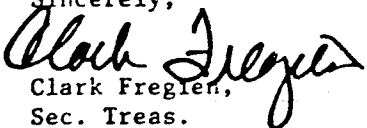
Reference the bid proposal as submitted by Alder Engineering and Construction Company for the work as referenced. The bid was submitted on 12-15-89.

F&H Construction, a qualified bidder on the project hereby protests the submission of the bid by Alder Engineering and Construction Company. The basis for protest is referenced in the General Conditions of the bid documents, specifically page B-3, paragraph four (4). The text reads, all blank spaces in the bid form shall be filled. Bids received without all such items completed will be considered nonresponsive.

In addition the questionnaire portion of the submitted bid document, which is to have a listing of the names of the manufacturers of equipment, specifically states that failure to furnish all information requested in the Questionnaire may be cause for rejection of the bid. In fact Alder Engineering and Construction Company completed only four of the required twenty-five required items. This in itself puts the City of Lodi in a disadvantage in determining the award as they will not be in a position to know the manufacturer of at least eight-four (84%) of the equipment to be supplied. In addition the apparent low contractor has the continued ability after the bid (five days) to reduce the price of equipment supplied by manufacturers, and not let the City of Lodi benefit.

In conclusion our company feels that a fair bid was not presented to the City as called for by the bidding documents, and ask that the bid of Alder Engineering and Construction Company be deemed non-responsive.

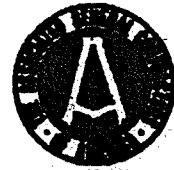
Sincerely,


Clark Fregien,
Sec. Treas.

cc: Jack L. Ronsko
Public Works Director

General Engineering and Building Contractors

4945 Waterloo Road • P.O. Box 55245 • Telephone (209) 931-3738 • Stockton, California 95205 • FAX (209) 931-4427
License No. 293306



ALDER CONSTRUCTION COMPANY

GENERAL CONTRACTORS 3838 South 500 West Suite #1 Salt Lake City, Utah 84123 Phone 266-8856



DECEMBER 27, 1989

JACK L. RONSKO, Public Works Director
CITY OF LODI, CITY HALL
221 WEST PINE STREET
LODI, CALIFORNIA 95241-5634

RE: Award of the White Slough Water Pollution Control
Facility Expansion Project.

Gentlemen:

We received your letter of December 21, 1989 and we are also anxious to get this project awarded and under construction.

In the above letter you mention that the City Council in it's meeting December 20, 1989 has two concerns that have delayed the award of the contract to Alder Engineering & Construction.

First, is a letter from F & H Construction protesting our bid as being nonresponsive, because we did not fill out all of the blanks on the bid form. Please note F & H Construction's reference to paragraph 4 page B-3 states... "All blank spaces on the bid form shall be filled...", yet the Questionnaire states "Failure to furnish information.... ..MAY be cause for rejection of the Bid."

The bid documents are defined by the INVITATION TO BID, as consisting of the SPECIFICATION AND DOCUMENTS, for the WHITE SLOUGH WATER POLLUTION CONTROL FACILITIES CAPACITY EXPANSION IMPROVEMENTS, CITY OF LODI, CALIFORNIA, VOLUME I, VOLUME II and contract drawings for the construction of: This Plant.

Award of White Slough Water P C F Expansion
Alder Engineering & Construction Co.
3939 South 500 West
Salt Lake City, Utah 84123

The INVITATION TO BID as amended by addendum #4 states that "The owner reserves the right to award the contract base bid with no, all, or any combination of deductive alternatives, to reject all Bids, to waive informalities,

and to reject nonconforming, nonresponsive, or conditional Bids." The INSTRUCTION TO BIDDERS, Item 10. AWARD OF CONTRACT also states that you "... can waive informalities," .

This clause gives The City the option to choose any bid from the bids submitted that best meets your needs and reject those that don't.

Alder Engineering and Construction's Bid of \$9,933,405.00 is a responsive bid from a construction company that has thirty years experience in municipal water and wastewater treatment works, and meets your needs. The information missing on our bid form at bid time has been provided to the City, as requested by the project engineers.

Your reserved right to waive informalities would allow you to accept our bid as submitted.

The second concern seems to be "the fact that you (Alder) have not yet submitted an instrumentation supplier which meets the qualifications in the specifications."

Section 13400 - INSTRUMENTATION

2. SUPPLIER'S QUALIFICATIONS. The entire system shall be designed, coordinated, and supplied by a qualified system supplier who is regularly engaged in the business of designing and building instrument control systems for water and wastewater products.

The specification does not name any manufacturer as an approved source of supply, and therefore does not eliminate any manufacturer as a possible supplier.

Before the first bidding of this project November 1, 1989 Karris Engineering contacted Black and Veatch, requesting approval to bid on the instrumentation package on this project. Karris Engineering was not told that they could not bid, and assumed that since they were not rejected they could bid the project and work out the details of approval later.

Award of White Slough Water P C F Expansion
Alder Engineering & Construction Co.
3839 South 500 West
Salt Lake City, Utah 84123

They submitted a bid to all electrical subcontractors involved in the November 1, bidding and also gave the general contractors a copy of their bid. At Bid time some of the General Contractors may have listed them as a supplier of instrumentation equipment. Alder listed Analog and Digital Systems as our instrumentation supplier.

All bids from the November 1, 1989 bidding were rejected and new bids were called for on December 15, 1989.

Addendum #4 was written November 30, 1989, to set forth the conditions for the rebid.

Addendum #4 does not indicate that there was any problem with using Karris Engineering as a supplier of instrumentation equipment.

As a result Karris Engineering again submitted a bid to all electrical subcontractors to supply the Section 13400 INSTRUMENTATION.

For the December bidding BEARD CORPORATION, an electrical subcontractor, submitted us an unpriced facsimile bid form to Alder to outline the items they intend to cover in their bid. The pricing was called to us by telephone as well as the list of suppliers they intended to use.

Beard Corporation was the low electrical subcontractor and included Karris Engineering as their instrumentation supplier.

We understand that BEARD ELECTRIC CORPORATION was listed as the low electrical subcontractor by almost all other General Contractors bidding this project the second time and Karris Engineering was listed as the instrumentation supplier by all of the general contractors.

Any cost advantage gained by using Karris Engineering as the supplier for Section 13400 INSTRUMENTATION was given to the OWNER in our bid on the contract.

I was told at one point in time before the bid opening of December 15, 1989 that if I used either TRANS-DYNE CONTROLS or CMC that I would have no resistance to their approval as Instrumentation Suppliers.

These manufacturers or suppliers names were not included in the specifications as a standard of quality and it is industry standard that other manufacturers could be used pending review of their qualifications after the award of the General Contract but before issuance of the subcontracts.

12/27/89 16:50 2668856


ALDER CONST

004

Award of White Slough Water P C F Expansion
Alder Engineering & Construction Co.
3939 South 500 West
Salt Lake City, Utah 84123

We will provide an Instrumentations Supplier that best
meets the qualification requirement of the specification.
We will have to review with the project engineer, to be
sure whether CMC or Karris Engineering is best qualified
to do this work.

Sincerely,

A handwritten signature in dark ink, appearing to read "William R. Barton", written in a cursive style.

William R. Barton
Vice President

DEC 29 '89

CITY ATTORNEY'S OFFICE

RICHARD E. MACEY
LAWRENCE R. BRISCOE
JULIE M. MACEY

MACEY & BRISCOE
ATTORNEYS AT LAW
ASSOCIATED IN THE PRACTICE OF LAW
4609 QUAIL LAKES DRIVE, SUITE 4
STOCKTON, CALIFORNIA 95207

Exhibit F

TELEPHONE
(209) 951-8227
FACSIMILE
(209) 474-6867

December 27, 1989

City of Lodi
221 W. Pine
Lodi, CA 95241

Attention: Bob McNatt - City Attorney

Re: Bid Proposal for: White Slough Water Pollution
Control Facilities - 12/15/89

Dear Mr. McNatt:

This letter is being written to you in accordance with our telephone conversation of this date.

As you are aware, this office represents F & H Construction Company who bid on the above designated project.

At the time of the bid openings it was thought by the City of Lodi that Alder Engineering and Construction Company was the lowest responsible bidder. On that basis, F & H Construction Company would have had the second lowest responsible bid. However, it is the position of F & H Construction Company and in accordance with a previous letter forwarded on December 20, 1989, by said Company that F & H Construction is the lowest responsible bidder on this project and that the contract should be awarded to F & H Construction Company.

The bid of Alder Engineering and Construction Company is an irregular bid, which irregularity is of such a substantial nature that it afforded the Alder Company an advantage over the other bidders and affects one or more of the main and substantial elements that were contemplated and considered in reaching a price figure and the result then would affect the amount of the bid to the detriment of the City of Lodi and the other bidders.

The irregularity of which F & H Construction is complaining and which should make the bid in any decision reached by the City of Lodi an irregular and unacceptable bid is that the bidder Alder Engineering and Construction Company, although it had numerous other discrepancies in its bid, failed to furnish all information requested in the "Questionnaire" which according to Addendum "4" was a bid form requiring a listing for all manufacturers of equipment and which form is designated (Q-1).

Out of a list of 26 equipment suppliers only four (4) were designated by Alder Engineering which amounts to an omission of

Bob McNatt - City Attorney
December 27, 1989
Page Two

almost 84% of the equipment to be supplied. That particular portion of the bid was substantially left unanswered. This is a very substantial portion of any contractor's bid because it would be normal to get a price as F & H Construction did from each equipment manufacturer so you could base your bid price on the quoted price of each equipment manufacturer. The vital nature of this information is further demonstrated by the fact that Alder Engineering and Construction Company when approximately three days after the bid opening, submitted a document purporting to contain the information requested. In examining that document it should be noted that even that creates what must further be determined to be an irregular bid and unacceptable. Specification Section 11332 contains three alternative equipment manufacturers, Section 11334 contains two alternates, Section 13232 lists two alternates and finally, Specification Section 11234 contain two alternates. By the use of these alternates Alder is still able to get counter-bidding which could reduce the price and cost of their work depriving the City of Lodi of a benefit that should have been given to the City of Lodi and as well acts detrimentally against the other bidders who submitted the manufacturers of their equipment and were bound by their submittals.

Not only did Alder Engineering and Construction Company enable itself to get competitive bids from the majority of its equipment manufacturers by not complying at all with the bid form, but it still is in a position to competitively reduce it's cost, again, without giving the City of Lodi any advantage of that reduction and detrimentally affecting the other bidders.

The matter of irregular bids and the legal effect is discussed in Attorneys Guide to California Construction Contracts and Disputes authored by James Acret. In Section 4.17 it is stated in regard to "Irregular Bids":

"If there is an irregularity or a clerical error in the bid the public authority is faced with a question of whether it can award the contract to the apparent low bidder if both parties are willing to waive the irregularity. If the irregularity does not materially affect the proposal the awarding official may waive the admission or variance. In determining whether an irregularity is of

Bob McNatt - City Attorney
December 27, 1989
Page Three

a substantial nature the question is whether it affords the bidder an advantage over other bidders and affects one or more of the elements that were contemplated or considered in reaching a price figure so that the result affects the amount of the bid. (Underlining added) (Citing authorities)" P. 175

The principle of law is cited in Menefee vs. County of Fresno, 163 Cal App 3d, 1180; 210 Cal Rptr, 99, 102. In that case it was stated that there should be no waiver of an irregularity in a bid which would give the bidder an unfair advantage stating as follows:

"Williams vs. Bergin, 129 Cal, 461; 62 P, 59 establishes the principle that waiver should not be allowed if the irregularity would give the bidder an unfair advantage..."

In that case, the contractor failed to sign the bid form but the Court held that since he had also signed the bond plus other areas of signature that in itself was not an irregularity that gave the bidder an unfair advantage, but the case recognizes the theory of an unfair advantage over other bidders.

In City Counsel of Beverly Hills vs. Superior Court (1969) 272 C.A. 2d, 876, the lowest responsible bidder did not have a license at the time the bid was submitted but at that time the contract was awarded the bidder did have the proper license. Nevertheless, in that case, the Court held that that was an irregularity that would require the City to turn down the bid.

The requirement of listing the equipment supplier is completely analogous to the "Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100-4114." The same reasoning that caused the Legislature to enact the Subcontracting Fair Practices Act obviously would affect the failure of the listing of the material suppliers. It was stated by the Legislature:

"The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public improvements often results in poor quality of material and workmanship to the detriment of the public, deprive the public

Bob McNatt - City Attorney
December 27, 1989
Page Four

of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees and other evils." (Addendum to Section 4104 of the Public Contract Code)

Certainly every one of those practices that the Legislature hoped to eliminate is present in the requirement of the listing of the material suppliers. The same principles would apply to the situation now before the City Council of Lodi wherein the contractor is promiscuously substituting equipment suppliers and it would appear it is obviously shopping for bids to its own advantage contrary to the interest of the other bidders and the best interests of the City of Lodi which should have received the advantage of any reduced bid.

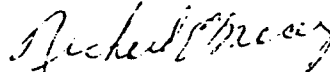
It is the position of F & H Construction Company that the irregularity referred to herein was of a substantial nature in that it afforded Alder Engineering and Construction Company an advantage over the other bidders and not only in that respect but also in the respect that it affected one or more of the elements that were contemplated and considered in reaching a price figure so that the result did affect the amount of the bid and also detrimentally effected the City of Lodi to the advantage of Alder Engineering and Construction Company.

It is also the opinion of F & H Construction Company that if it is not awarded the bid, it would be entitled to it's loss of profits as well as the costs of preparing the bid and it's bid bond.

It is my understanding that F & H Construction will be given the opportunity of appearing at the City Council Meeting of January 3, 1990, to further present its case.

Sincerely,

MACEY & BRISCOE



Richard E. Macey
Attorney at Law

REM:jg

ALDER CONSTRUCTION COMPANY

PROJECT MIX, 1980 to 1989

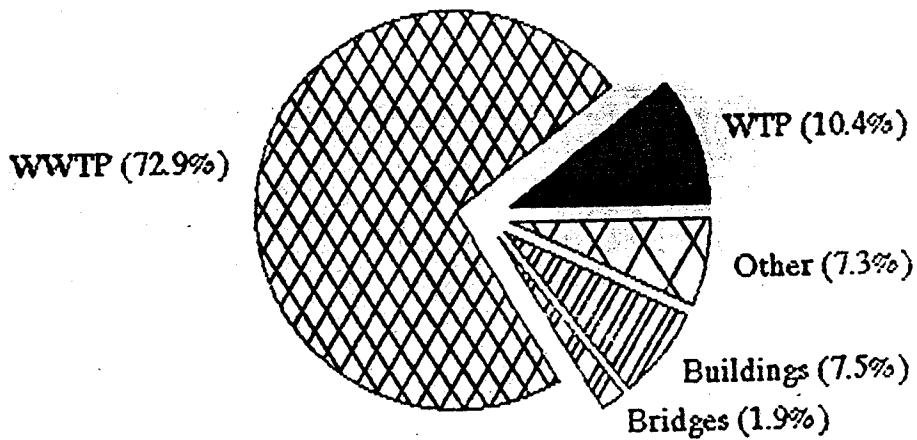


Figure Two

Notes:

- WWTP = Wastewater Treatment Plants
- WTP = Water Treatment Plants
- Other = Water Pumping Plants, Co-generation Facilities, Hydro-electric Plants, and Reservoirs

EXHIBITS

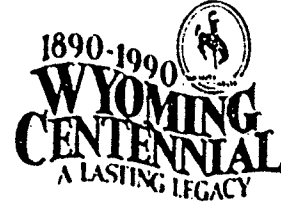
- No. 1: City of Evanston, Wyoming
- No. 2: Salt Lake County Water Conservancy District
- No. 3: James M. Montgomery Engineers
- No. 4: Terco Pipe and Fabricating, Inc.
- No. 5: Ted R. Brown and Associates

EXHIBIT ONE



CITY OF EVANSTON

1200 Main Street
EVANSTON, WYOMING 82930
(307) 789-9690



12 October 1989

Ms. Karen Hayes, Director
Board of Trustees
Clark County Sanitation District
5857 East Flamingo Road
Las Vegas, Nevada 89122

Dear Ms. Hayes:

Alder Construction Company is now closing out a Water Treatment Plant reconstruction project for the City of Evanston, Wyoming. Our involvement with Alder Construction in this project has been very positive. The project has been completed within time and budget constraints set forth by the contract documents.

Mr. Donald Fryor asked me to inform you of our projects successful completion and advise you of the character and quality of Alder's work.

Alder Construction Company has been an excellent contractor to work with. They have high standards and work ethics. They have been cooperative regarding changes. They have accepted responsibility and performed within the confines of the contract documents and specification to complete this project on a pleasing manner to the owner. We are pleased to respond favorably for this company since it was largely their work and cooperation that made our project a success.

If you would like specific information relating to this letter of recommendation, please call me at (307) 789-9805.

Sincerely

A handwritten signature in dark ink, appearing to read "Brian L. Honey", is written over a horizontal line.

Brian L. Honey
City Engineer

BH/lk



GERALD K. MALONEY, Chairman and Director
VERNE BREEZE, Vice Chairman and Director

DAVID G. OVARD
General Manager
Secretary, Treasurer

October 16, 1989

Ms. Karen Hayes
Chairman, Board of Trustees
Clark County Sanitation District
5857 East Flamingo Road
Las Vegas, Nevada 89122

Attention: William Mahorney

Dear Ms. Hayes:

SUBJECT: Experience with Alder Construction Company

This letter is sent to inform you of our recent experience with Alder Construction Company. In particular, I believe it may be of assistance to you as you consider an award of contract for your recently bid construction project.

Alder has completed a two-phase project for the Salt Lake County Water Conservancy District which is known as the Jordan Narrows Pump Station. Construction for this project spanned a period of 18 months. It included construction of a \$4,000,000 pumping station and related facilities on the bank and within the channel of the Jordan River. Construction time constraints and substantial dewatering efforts on this project are probably similar to key concerns on your project. Mr. Don Fryer acted as project manager and the contractor's engineer for this project.

Our experience with Alder has been very good. Alder proved to be successful in shoring and dewatering methods. We found Alder to be very capable in these work items because of the engineering expertise of Mr. Fryer and the skill of their project superintendent. Our experience on the Jordan Narrows project has been that Alder Construction Company has not requested extra payment for construction technique failures. Costs for the few construction errors were absorbed by Alder.

SALT LAKE COUNTY WATER CONSERVANCY DISTRICT

Ms. Karen Hayes
Chairman, Board of Trustees
Clark County Sanitation District
October 16, 1989
Page Two

I hope this description of our experience is of assistance to you in your considerations. I would be happy to discuss our experience further with you if you desire.

Sincerely,

Richard P. Bay, PE
Chief Engineer

cw

c: Don Fryer

MEMORANDUM

Serving the World's
Environmental Needs

Telephone
(801) 272-1000

4525 South Wasatch Boulevard
Suite 200, Salt Lake City
Utah 84124

JMM James M. Montgomery
Consulting Engineers, Inc.

October 16, 1989



Clark County Sanitation District
5857 East Flamingo Road
Las Vegas, NV 89122

ATTN: Karen Hughes, Chairman
Board of Trustees

PROJECT: New Aerated Grit Chamber

SUBJECT: Alder Construction Company B'd

Gentlemen:

We have been asked by Don Fryer of Alder Construction Company to provide the following information regarding the Jordan Narrows River Intake Pumping Station, a project Alder recently completed for the Salt Lake County Water Conservancy District, and for which JMM served as design and construction management consultants. The job included construction of a major raw water pumping facility (11,000 horsepower, 165 mgd) on the bank of the Jordan River in southern Salt Lake County on an extremely difficult site. The project site was very small with limited access, located on steep terrain with highly permeable gravelly soils and high groundwater conditions resulting from the adjacent river.

Alder Construction Company, with Don Fryer as project manager, was low bidder for the work. According to Mr. Fryer, a major factor which differentiated themselves from other bidders, was Alder's proposed excavation and dewatering method. Their dewatering system and excavation control method relied on limited use of sheet piling and construction of a perimeter gravel drain and sump. Alder used this system successfully to control the excavation and accomplish the work to meet critical construction schedule deadlines. The construction methodology employed appeared to be appropriate for the job, and the project never was at risk from the contractor's construction methods.

We regard Alder Construction Company as a well qualified general contractor and Don Fryer a competent project manager. We do not hesitate to recommend

Clark County Sanitation
District

-2-

October 16, 1989

them for the types of water and wastewater related public works projects they
have constructed for our clients.

Sincerely,

JAMES M. MONTGOMERY
Consulting Engineers, Inc.



Robert Mayers, P.E.

/kbt

cc: William Mahoney, CCSD
Marc Brown
Don Fryer



EXHIBIT FOUR



Terco Pipe & Fabricating, Inc.

14907 TREICHEL RD. P.O. DRAWER 400
TOMBALL, TEXAS 77375
713-351-1008

October 13, 1989

Clark County Sanitation District
Board of Trustees
Ms. Karen Hayes, Chairman
5857 East Flamingo Road
Las Vegas, Nevada 89122

Attn: William Mahorney

Gentlemen:

I was recently contacted by Mr. Don Fryer of Alder Construction Co. concerning a project his firm bid for work in your facilities. He stated that you had concerns for his construction methods and asked, as our firms have successfully completed several projects together over the years, would I write a letter to you summing my experience with Alder Construction Co.

Alder has been one of the top General Contractors in the Utah region for decades. We, along with their competitors, are sometimes amazed at how competitive their bids are. Given the fact that often their bids are low due to use of alternative construction methods, and they remain extremely strong financially, one cannot argue with the fact that they know what they're doing.

I believe the secret to their success is in their engineering and management. I have often been impressed with the thoroughness of their deliberations before bid time and many times have been requested to redesign certain aspects of a project before the bid in order to be more competitive and, ultimately, save the owner money with a well constructed project.

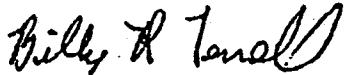
Another key factor in Alder's success has been the quality of their field supervisors. Mr. Bruce Alder, and his father Jack before him, have employed extremely qualified supervisors. In many instances we have been presented with pipe installation problems due to soils, hazards, etc. and the solutions promoted by their field supervisors have always worked. Never have we failed and been required to "re-think" the problem.

Alder is strong financially. They pay their bills promptly and without argument. This is an oddity in the municipal construction field and enables them to get lower bids ~~from their vendors~~.

Finally, if Mr. Fryer is convinced of his construction methods for your project, he has proven those methods before. Often I have disagreed with his ideas, but he has always proven me wrong.

If I may be of further assistance please call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billy R. Terrell".

Billy R. Terrell, President
Terco Pipe & Fabricating, Inc.

BRT/rdb

EXHIBIT FIVE

Ted R. Brown and Associates
In c. ————— Manufacturers Representatives

Tel: (801) 486-7241
FAX 801-487-8913

P. O. Box 1356
1401 Major St.
Salt Lake City, Utah 84110

October 12, 1989

CLARK COUNTY SANITATION DISTRICT
Chairperson of the Board of Trustees
5857 East Flamingo Road
Las Vegas, Nevada 89122

Attention: Ms. Karen Hayes

Reference: Aerated Grit & Secondary Treatment Plant Ordor Control

Dear Ms. Hayes:

In being one of the leading sales representative companies in Salt Lake City for the past 36 years, I would like to share with you our experiences in working with Alder Construction.

In this mountain area it is common knowledge that Alder Construction has the highest ethical standards in the business.

As a supplier, I feel confident in giving prices out early to them knowing my numbers will be kept in strict confidence. It is also my experience that after the bid, products are never "shopped" around or cheaper substitutes used. As an Application Engineer I work closely with all of the major engineer companies who manage these projects. Here again, it is common knowledge about the quality of work Alder does in the field.


It is my expressed opinion that the Sanitation District should be pleased to have Alder install the above mentioned project and feel reassured about the quality of work, management and engineering skills that Alder can offer.

Please find enclosed a copy of our line card showing some of the major lines we carry. Also please find the article that ran in a local construction magazine showcasing some of Alder's major projects.

If need be, please feel free to call. Thank you and good luck on your project.

Regards,

TED R. BROWN &
ASSOCIATES, INC.



James S. Pappas
Sales & Application Engineer

JSP/lm

Enclosure